

## **Assembly Bill No. 2955**

### **CHAPTER 649**

An act to amend Sections 25290.1 and 25299.51 of, to add Sections 25290.1.1 and 25290.1.2 to, and to add Chapter 6.77 (commencing with Section 25299.200) to Division 20 of, the Health and Safety Code, relating to underground storage tanks, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 2004. Filed  
with Secretary of State September 21, 2004.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**AB 2955, McCarthy. Underground storage tanks: leakage detection: grants.**

(1) Existing law generally regulates the storage of hazardous substances in underground storage tanks and requires underground storage tanks that are used to store hazardous substances to meet certain requirements. Existing law establishes various requirements for an underground storage tank installed on or after July 1, 2004, including requirements that the primary and secondary containment be product tight. Existing law defines the term "product tight," for purposes of those requirements, to mean impervious to the liquid and vapor of the substance that is contained.

This bill would revise the performance standards for those underground storage tanks with regard to the construction, operation, and maintenance of those tanks.

The bill would require a local agency on the effective date of this bill and for 179 days thereafter, except as specified, to only issue a notice to comply to an owner or operator of an underground storage tank that does not maintain a specified vacuum or pressure, thereby imposing a state-mandated local program by imposing new duties upon local agencies. The bill would require this notice to comply to be issued in the course of conducting an inspection by an authorized representative of the local agency, and to include a time limit in which to comply. The bill would require a certification that the violation has been corrected to be returned to the local agency in a specified manner, and would provide that a false certification that the violation has been corrected is punishable as a misdemeanor, thereby imposing a state-mandated local program by creating a new crime. The bill would allow a local agency to take any enforcement action authorized under the underground

storage tank law with regard to such a violation, if the violation is intentional or occurs as the result of gross negligence.

The bill would require the State Water Resources Control Board and the State Air Resources Board, under the direction of the California Environmental Protection Agency, to certify, to the best of their knowledge, that the equipment that meets certain requirements for enhanced vapor recovery systems at gasoline dispensing facilities also meets the underground storage tank laws.

(2) Under the existing Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, owners and operators of petroleum underground storage tanks are required to pay a storage fee for each gallon of petroleum placed in the tank. The fees are required to be deposited in the Underground Storage Tank Cleanup Fund, which also contains certain penalties collected by the board. The money in the fund may be expended by the State Water Resources Control Board (the board), upon appropriation by the Legislature, for various purposes, including the payment of claims to aid owners and operators of petroleum underground storage tanks who take corrective action to clean up unauthorized releases of petroleum from those tanks.

Existing law, until January 1, 2004, required the Technology, Trade, and Commerce Agency to conduct a program to make loans and grants to small businesses for compliance with the underground storage tank requirements.

This bill would require the board to conduct a grant program to assist small businesses in meeting the requirements regarding the maintenance of the tanks' interstitial space, and the pretesting prior to, and testing of the tank after, installation, to demonstrate the tank is product tight.

The bill would require the board to make grant funds available to eligible grant applicants from the Petroleum Underground Storage Tank Financing Account, which this bill would reestablish in the State Treasury. The bill would make the creation of the account inoperative if and when AB 1068 of the 2003–04 Regular Session of the Legislature takes effect and creates that account.

The bill would specify conditions for the grant application and would authorize grant funds to be used to finance or reimburse up to 100% of the costs necessary to comply with specified testing and leak detection equipment costs. However, the bill would prohibit the board from granting more than \$15,000 for each facility, as defined, to assist a grant applicant in meeting the interstitial space requirements, and more than \$15,000 for each facility, to assist a grant applicant in pretesting and testing that a tank is product tight.



The bill would authorize the board to expend the funds in the account, upon appropriation by the Legislature, for making these grants and administering the grant program.

The bill would require the board to transfer \$3,500,000, for the 2004–05 fiscal year, from the Underground Storage Tank Cleanup Fund to the account, and would appropriate those amounts therefrom to the board, for purposes of making those grants and administering the grant program, thereby making an appropriation.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

(4) The bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 25290.1 of the Health and Safety Code is amended to read:

25290.1. (a) Notwithstanding subdivision (o) of Section 25281, for purposes of this section, “product tight” means impervious to the liquid and vapor of the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.

(b) Notwithstanding Sections 25290.2 and 25291, every underground storage tank installed on or after July 1, 2004, shall meet the requirements of this section.

(c) The underground storage tank shall be designed and constructed to provide primary and secondary levels of containment of the hazardous substances stored in it in accordance with the following performance standards:

(1) Primary containment shall be constructed, operated, and maintained product tight and compatible with the stored product.

(2) Secondary containment shall be constructed, operated, and maintained product tight. The secondary containment shall also be constructed, operated, and maintained in a manner to prevent structural weakening as a result of contact with any hazardous substances released from the primary containment, and also shall be capable of storing the hazardous substances for the maximum anticipated period of time necessary for the recovery of any released hazardous substance.



(3) Secondary containment shall be constructed, operated, and maintained to prevent any water intrusion into the system by precipitation, infiltration, or surface runoff.

(4) In the case of an installation with one primary tank, the secondary containment shall be large enough to contain at least 100 percent of the volume of the primary tank.

(5) In the case of multiple primary tanks, the secondary containment shall be large enough to contain 150 percent of the volume of the largest primary tank placed in it, or 10 percent of the aggregate internal volume of all primary tanks, whichever is greater.

(d) The underground tank system shall be designed and constructed with a continuous monitoring system capable of detecting the entry of the liquid- or vapor-phase of the hazardous substance stored in the primary containment into the secondary containment and capable of detecting water intrusion into the secondary containment.

(e) The interstitial space of the underground storage tank shall be maintained under constant vacuum or pressure such that a breach in the primary or secondary containment is detected before the liquid or vapor phase of the hazardous substance stored in the underground storage tank is released into the environment. The use of interstitial liquid level measurement methods satisfies the requirements of this subdivision.

(f) The underground storage tank shall be provided with equipment to prevent spills and overfills from the primary tank.

(g) If different substances are stored in the same tank and in combination may cause a fire or explosion, or the production of flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container, those substances shall be separated in both the primary and secondary containment so as to avoid potential intermixing.

(h) Underground pressurized piping that conveys a hazardous substance shall be equipped with an automatic line leak detector.

(i) Before the underground storage tank is covered, enclosed, or placed in use, the standard installation testing requirements for underground storage systems specified in Section 2.4 of the Flammable and Combustible Liquids Code, adopted by the National Fire Protection Association (NFPA 30), as amended and published in the respective edition of the Uniform Fire Code, shall be followed.

(j) Before the underground storage tank is placed in use, the underground storage tank shall be tested after installation using one of the following methods to demonstrate that the tank is product tight:

(1) Enhanced leak detection.

(2) An inert gas pressure test that has been certified by a third party and approved by the board.



(3) A test method deemed equivalent to enhanced leak detection or an inert gas pressure test by the board in regulations adopted pursuant to this chapter. An underground storage tank installed and tested in accordance with this subdivision is exempt from the requirements of Section 25292.5.

(k) Notwithstanding Section 25281.5, for any system installed to meet the requirements of this section, those portions of vent lines, vapor recovery lines, and fill pipes that are beneath the surface of the ground are “pipe” as the term is defined in subdivision (m) of Section 25281, and therefore part of the underground storage tank system.

SEC. 2. Section 25290.1.1 is added to the Health and Safety Code, to read:

25290.1.1. (a) (1) On the effective date of the act adding this section and for 179 days thereafter, a local agency shall only issue a notice to comply pursuant to this section to an owner or operator of an underground storage tank subject to Section 25290.1 that does not maintain the vacuum or pressure that is required by subdivision (e) of Section 25290.1, except as otherwise provided in this section.

(2) If the violation described in paragraph (1) occurs on or after the 180th day from the effective date of the act adding this chapter, the local agency may take any enforcement action authorized by this chapter.

(b) A local agency shall issue the notice to comply alleging a violation described in paragraph (1) of subdivision (a) by presenting a notice to comply to the owner or operator in writing, which meets all of the following requirements:

(1) The notice to comply shall be written in the course of conducting an inspection by an authorized representative of the local agency.

(2) A copy of the notice to comply shall be presented to a person who is an owner, operator, employee, or representative of the facility being inspected at the time that the notice to comply is written.

(3) The notice to comply shall clearly state that a violation described in paragraph (1) of subdivision (a) was discovered, a means by which compliance may be achieved, and a time limit in which to comply, which shall not exceed 60 days. The local agency may provide a one-time extension of the time limit for compliance specified in the notice, not to exceed an additional 60 days, if the local agency determines that an extension is necessary to ensure compliance.

(4) The notice to comply shall contain a statement that the inspected facility may be subject to reinspection at any time.

(c) (1) On or before five working days after the date the violation described in paragraph (1) of subdivision (a) is corrected, the person cited in the notice to comply or an authorized representative of that



person shall sign the notice to comply, shall certify that the violation has been corrected, and shall return the notice to the local agency.

(2) A false certification submitted pursuant to paragraph (1) that the violation is corrected is punishable as a misdemeanor.

(3) The effective date of the certification that the violation has been corrected shall be the date that the certification is postmarked.

(d) Notwithstanding subdivision (a), if a person fails to correct the violation within the prescribed period in the notice, the local agency may take any enforcement action authorized by this chapter.

(e) This section does not do any of the following:

(1) Prevent the reinspection of a facility to ensure compliance.

(2) Prevent a local agency, on a case-by-case basis, from requiring a person subject to a notice to comply to submit reasonable and necessary documentation to support a claim of compliance by the person.

(3) Restrict the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

(4) Prevent the local agency, state board, or regional board, from cooperating with, or participating in, a proceeding specified in paragraph (3).

(f) Notwithstanding subdivision (a), if the violation described in paragraph (1) of subdivision (a) is intentional or occurs as the result of gross negligence, the local agency may take any enforcement action authorized by this chapter.

SEC. 3. Section 25290.1.2 is added to the Health and Safety Code, to read:

25290.1.2. (a) The board and the State Air Resources Board, under the direction of the California Environmental Protection Agency, shall certify to the best of their knowledge, that the equipment that meets the requirements of Section 94011 of Title 17 of the California Code of Regulations for enhanced vapor recovery systems at gasoline dispensing facilities, as implemented by the State Air Resources Board, also meets the requirements of this chapter. The board and the State Air Resources Board shall make this certification collaboratively, using existing resources.

(b) The board and the State Air Resources Board, under the direction of the California Environmental Protection Agency, when making the certification specified in subdivision (a), shall consult with interested parties, including local implementing agencies, underground storage tank system owners and operators, equipment manufacturers, underground storage tank system installers, and environmental organizations.



(c) The board and the State Air Resources Board shall post the certification and any supporting documentation on their Web sites.

(d) This section shall be implemented by the executive directors of the board and of the State Air Resources Board, or by their designees.

SEC. 4. Section 25299.51 of the Health and Safety Code is amended to read:

25299.51. The board may expend the money in the fund for all the following purposes:

(a) In addition to the purposes specified in subdivisions (c), (d), and (e), for the costs of implementing this chapter and for implementing Section 25296.10 for a tank that is subject to this chapter.

(b) To pay for the administrative costs of the State Board of Equalization in collecting the fee imposed by Article 5 (commencing with Section 25299.40).

(c) To pay for the reasonable and necessary costs of corrective action pursuant to Section 25299.36, up to one million five hundred thousand dollars (\$1,500,000) per occurrence. The Legislature may appropriate the money in the fund for expenditure by the board, without regard to fiscal year, for prompt action in response to any unauthorized release.

(d) To pay for the costs of an agreement for the abatement of, and oversight of the abatement of, an unauthorized release of hazardous substances from underground storage tanks, by a local agency, as authorized by Section 25297.1 or by any other provision of law, except that, for the purpose of expenditure of these funds, only underground storage tanks, as defined in Section 25299.24, shall be the subject of the agreement.

(e) To pay for the costs of cleanup and oversight of unauthorized releases at abandoned tank sites. The board shall not expend more than 25 percent of the total amount of money collected and deposited in the fund annually for the purposes of this subdivision and subdivision (h).

(f) To pay claims pursuant to Section 25299.57.

(g) To pay, upon order of the Controller, for refunds pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code.

(h) To pay for the reasonable and necessary costs of corrective action pursuant to subdivision (f) of Section 25296.10, in response to an unauthorized release from an underground storage tank subject to this chapter.

(i) To pay claims pursuant to Section 25299.58.

(j) To pay for expenditures by the board associated with discovering violations of, and enforcing, or assisting in the enforcement of, the requirements of Chapter 6.7 (commencing with Section 25280) with regard to petroleum underground storage tanks.





(k) For transfer to the Petroleum Underground Storage Tank Financing Account, for purposes of Chapter 6.77 (commencing with Section 25299.200).

SEC. 5. Chapter 6.77 (commencing with Section 25299.200) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 6.77. GRANTS FOR INSTALLING UNDERGROUND STORAGE  
TANKS

25299.200. For purposes of this chapter, the following definitions apply:

(a) “Account” means the Petroleum Underground Storage Tank Financing Account.

(b) “Board” means the State Water Resources Control Board.

(c) “Grant applicant” means a small business, as described in paragraph (1) of subdivision (a) of Section 25299.202, that applies to the board for a grant pursuant to this chapter.

(d) “Tank” means an underground storage tank, as defined in Section 25281, installed in accordance with the requirements of Section 25290.1 on and after July 1, 2004, but before June 30, 2009, that is used for the purpose of storing petroleum, as defined in Section 25299.22.

25299.201. (a) The board shall conduct a grant program pursuant to this chapter, to assist small businesses in meeting the requirements of subdivisions (e) and (j) of Section 25290.1.

(b) For purposes of this chapter, a grant provided to assist a small business in complying with subdivision (j) of Section 25290.1 may include the cost of pretesting the underground storage tank prior to backfill, in order to evaluate the underground storage tank’s ability to pass the test required by subdivision (j) of Section 25290.1.

25299.202. (a) The board shall make grant funds available from the Petroleum Underground Storage Tank Financing Account to eligible grant applicants that meet the following conditions:

(1) The grant applicant is a small business that employs fewer than 500 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation.

(2) The principal office of the grant applicant is domiciled in the state, and the officers of the grant applicant are domiciled in the state.

(3) All tanks owned and operated by the grant applicant are subject to compliance with Chapter 6.7 (commencing with Section 25280), and the regulations adopted pursuant to that chapter.

(b) A grant applicant may expend grant funds only to pay the costs necessary to comply with subdivision (j) of Section 25290.1, and to





finance the leak detection equipment costs necessary to meet with the requirements of subdivision (e) of Section 25290.1.

25299.203. (a) The board may issue a grant pursuant to this chapter before the installation of the tank, or within 12 months after the tank has been installed and placed in use.

(b) A complete grant application shall include all of the following information:

(1) Evidence of eligibility.

(2) A detailed cost estimate of the work and equipment required to be completed or installed for the tank to comply with subdivision (e) or (j) of Section 25290.1, as applicable.

(3) A detailed description of the costs incurred to perform the work and install the equipment required for the tank to comply with subdivision (e) or (j) of Section 25290.1, as applicable.

(4) Any other information the board determines is necessary to be included in the application form.

25299.204. (a) A grant recipient may use grant funds to finance or reimburse up to 100 percent of the costs necessary to comply with subdivision (j) of Section 25290.1, and to finance or reimburse the leak detection equipment costs necessary to meet the requirements of subdivision (e) of Section 25290.1.

(b) The board, pursuant to this chapter, shall not grant more than fifteen thousand dollars (\$15,000) per facility, as defined in Section 25281, to assist a grant applicant in meeting the requirements of subdivision (e) of Section 25290.1.

(c) The board, pursuant to this chapter, shall not grant more than fifteen thousand dollars (\$15,000) per facility, as defined in Section 25281, to assist a grant applicant in meeting the requirements of subdivision (j) of Section 25290.1.

25299.205. (a) (1) The Petroleum Underground Storage Tank Financing Account is hereby created in the State Treasury.

(2) The funds deposited into the account may be expended by the board, upon appropriation by the Legislature, for making grants pursuant to this chapter and administering this chapter.

(b) (1) This section shall not become operative if Assembly Bill 1068 of the 2003–04 Regular Session of the Legislature is enacted and takes effect on or before January 1, 2005, that bill creates the Petroleum Underground Storage Tank Financing Account in the State Treasury, and the bill adding this section takes effect on or after the effective date of Assembly Bill 1068.

(2) If the act adding this section is enacted and takes effect before the effective date of Assembly Bill 1068, this section shall become operative on the effective date of that act, and shall become inoperative on the



effective date of Assembly Bill 1068. On the date this section becomes inoperative, the Controller shall transfer all moneys in the account to the Petroleum Underground Storage Tank Financing Account established pursuant to Section 25299.109.

25299.206. (a) The board shall transfer the sum of three million five hundred thousand dollars (\$3,500,000) for the 2004–05 fiscal year, from the Underground Storage Tank Cleanup Fund to the account. Those funds are hereby appropriated to the board in each of those fiscal years for making grants pursuant to this chapter and administering this chapter.

(b) At the end of each fiscal year, any funds transferred from the Underground Storage Tank Cleanup Fund that remain in the account shall revert to the Underground Storage Tank Cleanup Fund.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because costs may be incurred by a local agency or school district because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution, or because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to establish compliance requirements for the maintenance of the vacuum or pressure of underground storage tanks and establish a small business grant program as soon as possible, it is necessary that this act take effect immediately.

